

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0181P

Income Tax

For the Short Period ending March 26, 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of a short period income tax return for the period ending March 26, 2002.

The taxpayer is an out-of-state company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the taxpayer unexpectedly switched from a stock election to an asset sale on the election date of December 15, 2002. This switching of the election caused the taxpayer to be required to file a short period return for the period ending March 26, 2002. As the taxpayer did not have the information available, the short period income tax return was filed and paid late.

The Department points out the taxpayer stated in Hearing that a payment of \$300,000 was made on July 15, 2002 in the event the taxpayer decided to do an asset election. The Department feels that if the taxpayer was contemplating the asset election five months in advance of the election date, the taxpayer should have had the necessary information to file the income tax return on the election date.

The regulation which controls penalty is 45 IAC 15-11-2(b) which states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.